

The Retailers' Occupation Tax Act imposes a tax upon persons engaged in this State in the business of selling tangible personal property to purchasers for use or consumption. 35 ILCS 120/2 (1996 State Bar Edition). (This is a GIL.)

February 8, 1999

Dear Mr. Xxxxx:

This letter is in response to your letter dated December 21, 1998. The nature of your letter and the information you have provided require that we respond with a General Information Letter which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 86 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

On behalf of a taxpayer, we are corresponding to you to request a determination whether our client's leasing activities in the state of Illinois (IL) would be subject to the sales and use tax or any other tax.

The following is the fact scenario of the activities performed by our client within IL.

The company was incorporated in the state of STATE in 1997. It started business in IL about September 1998. They presently own or lease various free standing towers throughout IL. It negotiates with major telecommunication carriers to lease the existing tower antenna space, pad or shelter space for placement of base station equipment and/or space required for cable runs to connect telecommunications equipment and antennas. The lessee, in turn, sets up a telecommunications service system facility. They charge the ultimate consumer for the air time use of cellular phones and pagers. It should be distinguished that **our client does not provide telecommunication services. It leases its towers for air space to be used by the telecommunication providers.** In addition, in certain cases, our client actually owns the land where the towers are constructed.

We have reviewed the Illinois Statutes and Regulations to determine the taxability of leasing such air space for purposes of the sales and use taxes or any other tax. With regard to sales taxes, it appears that this area is unique due its newness and no specific guidelines have been issued by the IL Legislature or IL Department of Revenue to date.

Our case **does not** involve the renting of tangible personal property, telecommunication services or broadcasting services as described in

your Regulations. Therefore, we are seeking a written opinion from your office stating whereby such an activity is taxable or non-taxable with respect to the IL sales tax.

Based upon the information presented, we respectfully request that a sales tax liability determination be made as expeditiously as possible. However, it is our belief that the taxpayer is not subject to IL Sales and Use Tax since the leasing of air space is not covered in the Statutes or Regulations.

If you should require any additional information, please don't hesitate to call us. Thank you for your prompt attention to this matter.

The Retailers' Occupation Tax Act imposes a tax upon persons engaged in this State in the business of selling tangible personal property to purchasers for use or consumption. 35 ILCS 120/2 (1996 State Bar Edition). Further, the Retailers' Occupation Tax is imposed on the gross receipts from the sale of such tangible personal property. If no tangible personal property is transferred, Retailers' Occupation Tax liability is not incurred.

Please note however, that Use Tax is owed when a person uses tangible personal property in Illinois. Tangible personal property purchased for use in providing a service, but that is not transferred to a customer is subject to Use Tax. Under the Service Occupation Tax Act, servicemen are taxed on tangible personal property transferred incident to sales of service. For your general information we are enclosing a copy of 86 Ill. Adm. Code 140.101 regarding sales of service and Service Occupation Tax.

Further, lessors of tangible personal property under true leases in Illinois, are deemed end users of the property to be leased. See the enclosed copy of 86 Ill. Adm. Code 130.220. As end users of tangible personal property located in Illinois, lessors owe Use Tax on their cost price of such property. No tax is imposed on rental receipts by the State of Illinois. Consequently, lessees incur no tax liability.

I hope this information is helpful. The Department of Revenue maintains a Web site which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis
Associate Counsel

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Enc.